

REMARKS/ARGUMENTS

Claims 3-10 and 13-29 were previously pending in the application. Claims **3-4, 13, 14, and 25-27 are amended, and claims 21 and 22 are canceled** herein. Assuming the entry of this amendment, claims **3-10, 13-20, and 23-29** are now pending in the application. The Applicant hereby requests further examination and reconsideration of the application in view of the foregoing amendments and these remarks.

Rejections Under 35 U.S.C. 103

In paragraph 3 of the Office Action, the Examiner rejected (i) claims 3-10 and 13-20 under 35 U.S.C. 103(a) as being unpatentable over Gebis in view of Lund and Bi, (ii) claims 21 and 22 under 35 U.S.C. 103(a) as being unpatentable over Gebis in view of Lund; (iii) claims 23-26 under 35 U.S.C. 103(a) as being unpatentable over Gebis in view of Lund and Huang et al. (Huang); and (iv) claims 27-29 under 35 U.S.C. 103(a) as being unpatentable over Uematsu et al. (Uematsu) in view of Bi.

For the following reasons, the Applicant submits that all of the pending claims are allowable over the cited references.

Claims 4 and 14

Claim 4, as amended, recites “[a] method of wirelessly providing, over the Internet, access to specialized content by a user, comprising the steps of: providing one or more wireless connection nodes in a geographically defined receiving area; delivering over the Internet to said one or more wireless connection nodes content selected by an operator of said one or more wireless connection nodes, wherein said content (1) is specific to said geographically defined receiving area, (2) is selected by the operator independent of the user and independent of any preference of the user, and (3) comprises a plurality of data streams constituting a plurality of Internet radio station webcasts; transmitting said delivered content via said one or more wireless connection nodes; and users located in said geographically defined receiving area receiving said transmitted delivered content with a plurality of receivers configured to receive content transmitted via said one or more wireless connection nodes, wherein: (i) said plurality of receivers are further configured to separately tune to each of the Internet radio station webcasts, (ii) said transmission step further comprises at least the step of transmitting a unique spreading code for each of said Internet radio station webcast; and (iii) said receiving step comprises at least the steps of: (a) a first receiver of said plurality of receivers receiving said unique spreading codes; (b) the first receiver selecting a selected one of said Internet radio station webcasts to play to a first user; and (c) the first receiver using said unique spreading codes to play to the first user the delivered content associated with the selected one of said Internet radio station webcasts.” (Enumeration added.)

The Examiner admitted that Gebis fails to disclose transmitting a unique spreading code for each of plural stations, receiving the unique spreading codes, selecting one of plural stations to play, and using the unique spreading codes to play the delivered content associated with the selected one of plural stations. (See Office Action, page 3.) The Examiner asserted, however, that Bi, column 1, lines 38-49, discloses recovering signals for each of the plurality of radio channels. The Examiner further asserted that it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Gebis to implement the feature of sending a unique spreading code for each station for the benefit of providing reliable and secure data communications. (See Office Action, pages 3-4.)

The Applicant respectfully disagrees, because the motivation to combine Gebis, Lund, and Bi alleged by the Examiner lacks merit. According to the Supreme Court in *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007), it is "important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed (Slip. Op. at 144). Moreover, in her May 3, 2007 Memorandum to Technology Center Directors, Margaret A. Focarino, Deputy Commissioner for Patent Operations, clearly states that "in formulating a rejection under 35 U.S.C. §103(a) based upon a combination of prior art elements, it remains necessary to identify the reason why a person of ordinary skill in the art would have combined the prior art elements in the manner claimed."

Here, Gebis discloses a portable personal radio (PPR) that allows a user to listen to audio information that is personalized to the user by a PPR server and then is transmitted to the user's device. Communication between the user's device and the PPR server begins by establishing a communications channel between the user's device and the PPR server. According to Gebis, the channel may be established via a cellular phone with a separate or integrated cellular modem, a cellular-digital-packet-data-capable phone, or a wireless data radio. (See Gebis, column 4, lines 27-43.) After a communication channel is established, the client identifies itself to the server and sends a request for specific content from the server, which in turn begins sending the requested content, which is personalized to the user. (See *id.*, column 4, lines 44-50; column 5, lines 9-14.) As such, it is clear from Gebis that each user's device in the PPR system establishes a unique channel with the PPR server, so that content personalized to the user may be transmitted to, and received by, the user.

The Examiner asserted that one of ordinary skill in the art would be motivated to modify the system of Gebis with the teaching of Bi to implement the feature of sending a unique spreading code for each station for the benefit of providing reliable and secure data communications. But the Examiner fails to account for the fact that, in Gebis, a unique communication channel between the user's device and the PPR server is already established. (See *id.*, column 4, lines 27-43.) There is no reason to believe that the unique communication channel of Gebis lacks reliability or security, nor has the Examiner explained how combining Gebis with Bi would make the unique communication channel of Gebis any more reliable or secure. Given the existence of the unique communication channel between the user's device and the PPR server, the alleged motivation to combine Gebis and Bi (i.e., to provide reliable and secure data communications) is illusory. Further encoding station content to further subdivide the radio spectrum would simply be expensive and unnecessary.

Such hindsight reasoning is clearly an improper basis for the finding of obviousness. See, e.g., In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992) ("[I]t is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious . . . This court has previously stated that '[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.'"); Texas Instruments Inc. v. U.S. Int'l Trade Comm'n, 988 F.2d 1165, 1178, 26 USPQ2d 1018, 1029 (Fed. Cir. 1993) ("Absent . . . [a] suggestion to combine the references, respondents can do no more than piece the invention together using the patented invention as a template. Such hindsight reasoning is impermissible."); In re Gorman, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991) ("As in all determinations under 35 U.S.C. section 103, the decisionmaker must bring judgment to bear. It is impermissible, however, simply to engage in a hindsight reconstruction of the claimed invention, using the applicant's structure as a template and selecting elements from references to fill the gaps."); Symbol Technologies Inc. v. Opticon Inc., 17 USPQ2d 1737, 1746 (S.D.N.Y.

1990), aff'd, 935 F.2d 1569, 19 USPQ2d 1241 (Fed. Cir. 1991) ("That a technician, in hindsight, could combine elements known within the technology to produce the contested patent does not make the patent obvious to one skilled in the art at the time the patent was issued."); In re Dow Chemical Co., 837 F.2d 469, 473, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988) ("The consistent criterion for determination of obviousness is whether the prior art would have suggested to one of ordinary skill in the art that this process should be carried out and would have a reasonable likelihood of success, viewed in light of the prior art . . . Both the suggestion and the expectation of success must be founded in the prior art, not in the applicant's disclosure."); In re Stencel, 828 F.2d 751, 755, 4 USPQ2d 1071, 1073 (Fed. Cir. 1987) (obviousness cannot be established "by combining the teaching of the prior art to produce the claimed invention, absent some teaching or suggestion that the combination be made.").

It is respectfully submitted that that only the Applicant has proposed the use of spreading codes to differentiate each Internet radio station webcast within a channel: "In accordance with the present invention, the content provider who controls server 112 can lease at least one RF band [a.k.a., channel] on the cellular radio tower 110. This enables the content provider to deliver several 'stations' (e.g., 20 to 40 stations, depending upon the basic operation of a particular CDMA cell). Each 'station' has a unique spreading code and thus is separately 'tunable'." (Specification, page 5, lines 13-16.) Further, "information is passed from the base station to all the hand-held mobile terminal devices in the area, providing information on what spreading codes are used and what stations are associated with the codes." (Id., page 9, line 8-10.) The Applicant respectfully submits that this use of existing cellular technology to provide a plurality of streaming Internet radio stations to a digital radio receiver (i) represents a significant contribution to the art of personal digital radio and (ii) is both novel and nonobvious.

For all these reasons, the Applicant submits that claim 4 is allowable over the cited references. For similar reasons, the Applicant submits that claim 14 is also allowable over those references.

Because claims 3, 5-10, 13, and 15-20 depend directly or indirectly from claims 4 or 14, it is further submitted that those claims are also allowable over the cited references.

The Applicant therefore respectfully submits that the rejections of claims 3-10 and 13-20 under Section 103 have been overcome.

Claims 23 and 24

Claim 23 recites "[a] system for wirelessly providing, over the Internet, access to specialized content by a user, comprising: one or more wireless connection nodes in a geographically defined receiving area, each of said one or more wireless connection nodes including a transmitter; a processor, coupleable to said one or more wireless connection nodes, said processor storing content and delivering over the Internet to said one or more wireless connection nodes content selected by an operator of said one or more wireless connection nodes wherein: said content is (1) specific to said geographically defined receiving area and (2) selected by the operator independent of the user and independent of any preference of the user, and said transmitters transmit said delivered content to said receiving area; a receiver in wireless communication with said one or more wireless connection nodes, said receiver receiving said transmitted delivered content; one or more other wireless connection nodes in another geographically defined receiving area different from said geographically defined receiving area, each of said one or more other wireless connection nodes including an other transmitter, wherein other content transmitted by each other transmitter is (1) specific to said other geographically

defined receiving area, (2) selected independent of the user and independent of any preference of the user, and (3) different from said content specific to said geographically defined receiving area; and a receiver (i) in wireless communication with said one or more wireless connection nodes at a first time and (ii) in wireless communication with said one or more other wireless connection nodes at a second time, said receiver receiving said transmitted delivered content at said first time and said other transmitted delivered content at said second time, wherein the content available to the receiver at each of the first and second times is pre-specified based on the wireless connection node whose transmission the receiver receives."

The Examiner asserted that Gebis, column 3, lines 44-50, teaches receiving transmitted delivered content at the first time and other transmitted delivered content at the second time. (See Office Action, page 6.) The Examiner admitted that Gebis fails to disclose that each of the first and second times is pre-specified based on the wireless connection node whose transmission the receiver receives.

The Examiner asserted instead that Huang, paragraph 0071, discloses receiving data from different sources according to a TDMA scheme. The Examiner further asserted that it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Gebis with the teaching of Huang for the benefit of providing timely content delivery. (Id., pages 6-7). The Applicant respectfully disagrees, however, that the combination of Gebis and Huang renders obvious the invention claimed in claim 23.

As an initial matter, the Examiner has failed to allege that any cited reference teaches or even suggests "a receiver (i) in wireless communication with said one or more wireless connection nodes at a first time and (ii) in wireless communication with said one or more other wireless connection nodes at a second time," as recited in claim 23. As such, the rejection of claim 23 is improper on its face and should be withdrawn.

Moreover, the cited portion of Huang states as follows:

FIG. 4 shows a wireless receiver according to an embodiment of the present invention. The wireless receiver 201 comprises a power amplifier and down-converter 203, a demodulator 205 and a demodulator controller 207. In this embodiment, the demodulator is capable of varying the level of demodulation (i.e. the number of bits per baud) in order to match the modulation level of the received signal generated and transmitted by the transmitter. The demodulator 205 may include a number of different demodulation rates, for example QPSK, 16-QAM and 64-QAM. The level of demodulation is controlled by the demodulation controller 207. In order to control the level of demodulation to match the modulation rate of the transmitter, the transmitter may transmit a control message indicating the modulation rate used. This control message may be received by the controller 207 which responds by controlling the demodulation rate of the demodulator 205 to the corresponding level. The control signal may be transmitted by the transmitter as a separate signal from the data transmission signal i.e. out-of-band, or may be included as a message with the data (i.e. in-band), for example as a message header with the data packet. This latter in-band implementation may be particularly useful when the receiver is implemented, for example in a base station, which communicates with and receives data from a number of different sources (for example CPEs). With different sources transmitting at different modulation rates, embedding the modulation rate control signal with the data enables the controller to readily adapt the demodulation level to the particular data frame so that the correct demodulation scheme is used for each successive data packet, where each successive data packet may arrive

from a different source within successive time frames according to a time division multiplexing access (TDMA) scheme.

(Huang, paragraph 0071.) This text, however, teaches nothing whatsoever regarding pre-specifying, based on the wireless connection node whose transmission the receiver receives, the content available to the receiver at each of the first and second times. As such, the cited portion of Huang fails to teach or even suggest the claimed limitation that “the content available to the receiver at each of the first and second times is pre-specified based on the wireless connection node whose transmission the receiver receives,” as recited in claim 23.

For all these reasons, the Applicant submits that claim 23 is allowable over the cited references. For similar reasons, the Applicant submits that claim 24 is also allowable over those references.

Because claims 25 and 26 depend directly or indirectly from claims 23 or 24, it is further submitted that those claims are also allowable over the cited references.

The Applicant therefore respectfully submits that the rejections of claims 23-26 under Section 103 have been overcome.

Claims 25 and 26

Claim 25, as amended, depends from claim 24 and recites the additional limitation that “the content available to the users is pre-specified based solely on the wireless connection node whose transmission the receiver receives, such that no determination of the user’s current geographic location is required before the delivered content is transmitted.”

The Examiner failed to provide any explanation to support the rejection of claim 25. Indeed, the Examiner has failed even to allege that the cited references teach or even suggest the limitations recited in claim 25.

The Applicant therefore respectfully submits that the rejection of claim 25 is improper and should be withdrawn. For similar reasons, the rejection of claim 26 is improper and should be withdrawn.

Claim 27

Claim 27 recites “[a] method of broadcasting, comprising: a wireless connection node receiving first content originating from a first content source and second content originating from a second content source; the wireless connection node spreading the first content using a first spreading code and the second content using a second spreading code; and the wireless connection node broadcasting the first and second spreading codes and the spread first and second content, wherein a plurality of receivers configured (i) to receive the spread first and second content and the first and second spreading codes and (ii) to despread a selected one of the spread first and second content using a corresponding one of first and second spreading codes may play to a plurality of users the selected one of the first and second content.”

The Examiner asserted that Uematsu, Figure 1, discloses a wireless connection node (element 3) receiving first media content originating from a first content source and second media content originating from a second content source (two content servers, element 2). The Examiner admitted that Uematsu fails to disclose the wireless connection node spreading the first content

using a first spreading code and the second content using a second spreading code; and the wireless connection node broadcasting the first and second spreading codes and the spread first and second content, wherein a plurality of receivers configured (i) to receive the spread first and second content and the first and second spreading codes and (ii) to despread a selected one of the spread first and second content using a corresponding one of first and second spreading codes may play the selected one of the first and second content. The Examiner instead asserted that Bi, column 1, lines 38-49, discloses recovering signals for each of the plurality of radio channels. The Examiner asserted that it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Gebis to implement the feature of sending a unique spreading code for each station for the benefit of providing reliable and secure data communications. (See Office Action, page 7.) The Applicant respectfully disagrees.

The portion of Bi cited by the Examiner states as follows:

When Code Division Multiple Access (CDMA) is used in a radiotelephone transmission system in which all the channels are broadcast at a common broadband frequency, each channel is differentiated by a unique spreading code. The signal is modulated with a spreading code before it is transmitted. The application of the spreading code converts the signal into a broadband signal which is transmitted. Application of the spreading code at the receiver to the received broadband signal the modulates the broadband signal and allows recovery of the information signal of that particular spreading code. . . .

(Bi, column 1, lines 38-49.) More specifically, Bi uses spreading codes to establish a number of unique radiotelephone channels between a corresponding number of CDMA-base cellular telephones and a base station. (Id., column 3, lines 58-65, and Figure 2.) Each cellular telephone is assigned a "different PN sequence that uniquely defines its particular transmission channel." (Bi, column 4, lines 15-16.) In Bi, however, no two cellular telephones use the same PN sequence to receive the same content at the same time. Thus, the cited portion of Bi fails to teach or even suggest the limitation that "a plurality of receivers configured (i) to receive the spread first and second content and the first and second spreading codes and (ii) to despread a selected one of the spread first and second content using a corresponding one of first and second spreading codes may play to a plurality of users the selected one of the first and second content," as recited in claim 27.

Rather, as discussed above, only the Applicant has proposed the use of spreading codes to differentiate each Internet radio station webcast within a channel, such that multiple radio receivers at one time can receive the same Internet radio station webcast: "In accordance with the present invention, the content provider who controls server 112 can lease at least one RF band [a.k.a., channel] on the cellular radio tower 110. This enables the content provider to deliver several 'stations' (e.g., 20 to 40 stations, depending upon the basic operation of a particular CDMA cell). Each 'station' has a unique spreading code and thus is separately 'tunable'." (Specification, page 5, lines 13-16.) Further, "information is passed from the base station to all the hand-held mobile terminal devices in the area, providing information on what spreading codes are used and what stations are associated with the codes." (Id., page 9, line 8-10.) Using the hand-held mobile terminal devices, a plurality of users may receive and listen to a plurality of radio stations. Moreover, all of the users may tune to the same radio station, if so desired. The Applicant respectfully submits that this use of existing cellular technology to provide a plurality of streaming Internet radio stations to a digital radio receiver (i) represents a significant contribution to the art of personal digital radio and (ii) is both novel and nonobvious.

The Applicant further submits that the motivation to combine Uematsu and Bi alleged by the Examiner is insufficient. The alleged motivation to combine Uematsu and Bi is “for the benefit of providing reliable and secure data communications.” (Office Action, page 6.) The Applicant respectfully submits that the Examiner has failed to explain how or why combining Uematsu and Bi would result in such “reliable and secure data communications.”

For all these reasons, the Applicant submits that claim 27 is allowable over Uematsu and Bi. Because claims 28-29 depend directly or indirectly from claim 27, it is further submitted that those claims are also allowable over the cited references.

Claim 28

Claim 28 recites “[t]he method of claim 27, wherein the first content and the second content comprise information specific to a geographically defined receiving area comprising the wireless connection node.”

The Examiner asserted that Gebis, column 2, lines 24-32, discloses receiving the first and second content from one or more other wireless connection nodes in other geographically defined receiving areas.

As an initial matter, claim 28 has been rejected as being unpatentable over Uematsu in view of Bi, not over Gebis.

Moreover, even assuming that the Examiner correctly characterizing the teaching of Gebis, column 2, lines 24-32, the Examiner has nevertheless failed to allege that the first content and the second content comprise information specific to a geographically defined receiving area comprising the wireless connection node, as recited in claim 28.

For all these reasons, the Applicant respectfully submits the rejection of claim 28 is improper and should be withdrawn.

Claim 29

Claim 29 recites “[t]he method of claim 27, wherein the first and second contents are digital streaming media signals, and the first and second content sources are digital streaming media servers.”

The Examiner asserted that Gebis, column 2, lines 34-40, discloses the first and second contents are digital streaming media signals from digital streaming media servers. Claim 28, however, stands rejected as unpatentable over Uematsu in view of Bi, not over Gebis. The Examiner has provided no explanation supporting the rejection of claim 28 over Uematsu in view of Bi.

For all these reasons, the Applicant respectfully submits the rejection of claim 29 is improper and should be withdrawn.

Conclusion

For the reasons set forth above, the Applicant respectfully submits that the rejections of claims 3-10, 13-20 and 23-29 under Section 103(a) have been overcome.

In view of the above amendments and remarks, the Applicant believes that the now-pending claims are in condition for allowance. Therefore, the Applicant believes that the entire application is now in condition for allowance, and early and favorable action is respectfully solicited.

Fees

During the pendency of this application, the Commissioner for Patents is hereby authorized to charge payment of any filing fees for presentation of extra claims under 37 CFR 1.16 and any patent application processing fees under 37 CFR 1.17 or credit any overpayment to Mendelsohn, Drucker, & Associates, P.C. Deposit Account No. 50-0782.

The Commissioner for Patents is hereby authorized to treat any concurrent or future reply, requiring a petition for extension of time under 37 CFR 1.136 for its timely submission, as incorporating a petition for extension of time for the appropriate length of time if not submitted with the reply.

Respectfully submitted,

Date: 03/26/2010
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